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December 22, 2011

BY HAND DELIVERY

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OFFICE OF GENERAL
COUNSEL

Re: **MUR 6506**

Dear Mr. Jordan:

On behalf of Build America PAC and Patsy Simmons, Treasurer, and Friends for Gregory Meeks and Patsy Simmons, Treasurer (collectively "Respondents"), we write in response to the complaint filed by the National Legal and Policy Center ("NLPC"). The complaint fails to present facts sufficient to show a violation of the Federal Election Campaign Act. Indeed, a careful review shows not only that the NLPC relied on speculation and innuendo, but that it willfully disregarded the facts that contradict its assertions. The Commission should dismiss the complaint.

The NLPC has a long history of presenting the Commission with the sorts of "[u]nwarranted legal conclusions" and "mere speculation" that must be disregarded.¹ For example:

- In MUR 5684, the NLPC accused rapper P Diddy of using a section 501(c)(3) charity to coordinate illegal corporate expenditures with the Kerry-Edwards campaign in 2004, failing to disclose receipts and expenditures "which must have totaled millions of

¹ See Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, MUR 4960, at 2 (Dec. 21, 2000). See also 11 C.F.R. § 111.4(d) (2011) (stating requirements for a valid complaint).

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dollars."² The General Counsel found that the NLPC's "assertions of coordination . . . appear to be nothing more than speculation."³ A unanimous Commission agreed and found no reason to believe that any violation had occurred.

- In MUR 5141, the NLPC charged that Representative Moran "received a large, unsecured, below-market loan from [a] drug company lobbyist" that "constituted a contribution far in excess of the amount allowed by law."⁴ But the complaint failed "to allege any facts that the loan was for use in connection with the campaign . . ."⁵ A unanimous Commission went beyond the General Counsel's recommendation to dismiss the complaint on prudential grounds, and affirmatively found no reason to believe a violation occurred.⁶
- In MUR 5136, the NLPC claimed that the AFL-CIO coordinated with the Gore/Lieberman campaign when it sponsored an advertisement in the *Washington Post* before the 2000 general election. On review, the General Counsel found that the allegations were "based – fatally – on mere speculation" and fell "far short" of making any cognizable allegation.⁷ A unanimous Commission agreed and dismissed the complaint.
- In MUR 4998, the NLPC filed a complaint over the DNet web site, claiming that the sponsors were making illegal contributions and expenditures, even though the content of the site had been approved by the Commission in Advisory Opinion 1999-25. The General Counsel recommended finding no reason to believe that any violation occurred. A unanimous Commission agreed and dismissed the complaint.⁸

² See Complaint, MUR 5684, at 2.

³ First General Counsel's Report, MUR 5684 at 7 (Jul. 31, 2006)

⁴ See Complaint, MUR 5141, at 2.

⁵ See, e.g., Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold, Matter Under Review 5141 at 2 (Apr. 17, 2002) (NLPC complaint dismissed for lack of reason to believe given that "[a] complainant's unwarranted legal conclusions from asserted facts will not be accepted as true").

⁶ See *id.*

⁷ First General Counsel's Report, MUR 5136 at 7 (Aug. 21, 2003).

⁸ First General Counsel's Report, MUR 4998 at 16 (Jan. 9, 2003).

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This complaint is cut from the same cloth. Armed only with speculation and a careless reading of Respondents' FEC reports, the NLPC presents the Commission with reckless claims of in-kind contributions and a purportedly bogus fundraising event. As before, the NLPC fails to support these charges, and the true facts contradict them. The Commission should dismiss the complaint.

DISCUSSION

Congressman Gregory Meeks represents the Sixth District of New York. His principal campaign committee is Friends for Gregory Meeks ("the Campaign"); his leadership PAC is Build America PAC ("the PAC"). Patsy Simmons serves as treasurer of both committees. The complaint levies three allegations – one against the Campaign, and two against the PAC. None provides any basis for further review.

1. The NLPC's Claims Regarding the Campaign's July 2008 Fundraiser Are Unsupported and Contradicted by the Public Record

NLPC alleges that the Stanford Financial Group made an illegal corporate contribution to the Campaign by defraying the costs of a July 2008 fundraising event in St. Croix. The NLPC acknowledges that the Campaign reimbursed the Stanford Financial Group \$3,591.05 for expenses "in line with Federal Election law and regulations." But it speculates that "the amount seems to be less than what should have paid for the services provided at the fundraiser." The sole "fact" tendered in connection with this event is a blind quote in a *New York Post* article, in which 80 guests are supposed to have dined on lobster, caviar and foie gras, while drinking expensive wine.

A review of the public record shows that the NLPC's allegations are baseless. First, the complaint ignores the Campaign's own FEC reports. The complaint says that "[l]odging and site rental were not paid by the campaign committee" and that "[t]ravel costs were apparently also not paid by the campaign as no disbursement was made to an airline that provided flights to St. Croix."⁹ But the Campaign's 2008 Pre-Primary report disclosed disbursements to American Airlines and to the Buccaneer Hotel in St. Croix for travel and lodging.¹⁰

Second, the NLPC offers no support for its allegation that the Campaign underpaid when it disbursed \$3,591.05 for food, beverage, wait staff and rental costs. The records contradict the NLPC's claim as to the number of attendees. The Campaign reported only 32 itemized

⁹ Complaint at 6.

¹⁰ See <http://www.stcroixtourism.com/transportation.htm> ("If you are arriving from Europe, you can fly to many gateway cities on the East Coast of the U.S., such as New York, and then connect thru San Juan Puerto Rico. You can also fly to Miami and then connect on a direct flight on American Airlines to St. Croix.").

contributions from individuals during the entire reporting period in question; only 10 were from individuals employed by Stanford-related companies.¹¹ If all 32 of the Campaign's itemized individual donors during the period had attended the event, the cost would have been \$112.22 per person; if only the 10 Stanford-related itemized donors had attended, the cost would have been nearly \$360 per person. This information, of course, was readily available to the NLPC from the Campaign's FEC reports. There was never any basis to allege that the Campaign underpaid for the event.

2. The NLPC's Claims About the November 2010 Fundraiser Are Contradicted by the True Facts

With similar disregard for the facts and law, the NLPC claims that the PAC hosted a fundraiser in Las Vegas that "didn't raise a single penny," hence converting the event costs into prohibited personal use. The sole basis for this claim is that, while the PAC disbursed \$8,063.23 to a casino in Las Vegas on December 28, 2010, its report disclosed no contributions during the same reporting period.

The NLPC claim is false. The cited disbursement relates to the PAC's sixth annual Las Vegas fundraising event, held on the weekend of November 12-14, 2010. The PAC sent out invitations advertising this event in summer 2010, suggesting contribution levels of \$2,500 and \$5,000, and received an array of contributions in connection with the event. During this time period, while holding no other events, the PAC raised \$56,000, the bulk of which was generated by this event. The dates and amounts of these contributions, of course, were readily accessible to the NLPC through the PAC's reports, which the NLPC chose to ignore.¹²

3. The Voided Checks Cited by the NLPC Provide No Basis for Further Action

Finally, the complaint and supplemental complaint point to two checks that were incorrectly identified as voided on the PAC's 2011 Post Special Election Report. The PAC contributed in a May 24, 2011 special election in New York, thus triggering an obligation to file a post-special election report. At the time, the PAC's records showed a discrepancy between its bank balance and its FEC-reported balance, which was lower than the bank balance. While reconciling the

¹¹ See Schedule A, Friends for Gregory Meeks 2008 12-Day Pre-Primary Report.

¹² The NLPC's claim of prohibited personal use also fails as a matter of law, insofar as the personal use restrictions apply solely to principal campaign committees. See 2 U.S.C. § 439a; 11 C.F.R. § 113.1(g); FEC Adv. Op. No. 2008-17, at 4.

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PAC's database to prepare the report on an expedited basis, the outside vendor responsible for preparing the PAC's reports incorrectly identified the checks in question as stale-dated and reported them as voided, failing to take steps to verify that the checks had not cleared. On subsequent review, the PAC has confirmed that the two checks were in fact cashed by the recipient committees and should not have been voided. The PAC is filing amended reports to correct the record with respect to the voided checks, the PAC's cash-on-hand and other errors identified during its review, and is taking steps to change its reconciliation and reporting processes going forward. The Commission has used its discretion to dismiss matters involving similar issues as de minimis, and should do so here as well.¹³

CONCLUSION

For the reasons set forth above, the Committee respectfully requests that the Commission dismiss this matter immediately.

Very truly yours,



Brian G. Svoboda
Andrew H. Werbrock
Counsel to Respondents

¹³ See, e.g., First General Counsel's Report, Matter Under Review 5538 (March 27, 2006) (recommending dismissal of allegations that a candidate committee misreported name, address, and occupation information for certain donors because any errors were de minimis); First General Counsel's Report, Matter Under Review 4814 (July 6, 1999) (recommending Commission take no further action regarding allegations that candidate committee improperly reported contributions because the errors were minor and because the committee took prompt action to correct them); Statement of Reasons of Commissioners Scott E. Thomas, Darryl R. Wold, Lee Ann Elliott, David M. Mason, Darryl L. McDonald, and Karl J. Sandstrom, Matter Under Review 4317 (June 14, 1999) (finding as probable cause to believe that the candidate committee misreported two contributions because the committee amended its reports to correct the error and any violations were immaterial).

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